



Emergency Regulation and Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	State Mental Health, Mental Retardation and Substance Abuse Board
Virginia Administrative Code (VAC) citation	12 VAC 35 –45-10 et seq.
Regulation title	Regulations for Providers of Mental Health, Mental Retardation and Substance Abuse Residential Services for Children
Action title	Addition of provisions for issuing an order of summary suspension of the license to operate a group home or residential facility for children
Document preparation date	September 15, 2005

This form is used when an agency wishes to promulgate an emergency regulation (to be effective for up to one year), as well as publish a Notice of Intended Regulatory Action (NOIRA) to begin the process of promulgating a permanent replacement regulation.

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Preamble

The APA (Code of Virginia § 2.2-4011) states that an “emergency situation” is: (i) a situation involving an imminent threat to public health or safety; or (ii) a situation in which Virginia statutory law, the Virginia appropriation act, or federal law requires that a regulation shall be effective in 280 days or less from its enactment, or in which federal regulation requires a regulation to take effect no later than 280 days from its effective date.

- 1) Please explain why this is an “emergency situation” as described above.*
- 2) Summarize the key provisions of the new regulation or substantive changes to an existing regulation.*

Chapter 363 of the 2005 Virginia Acts of Assembly (hb2881) authorizes the Commissioner of Mental Health, Mental Retardation and Substance Abuse Services (Commissioner) to issue an order of summary suspension of a license to operate a group home or residential facility for children in cases of immediate and substantial threat to the health, safety, and welfare of residents. The legislation requires the State

Mental Health, Mental Retardation and Substance Abuse Services Board to implement the provisions of the Act within 280 days of its enactment. The Board is adopting these emergency regulations to comply with this legislation.

This action will add a new section to the existing Regulations for Providers of Mental Health, Mental Retardation and Substance Abuse Residential Services for Children, which establishes a process for issuing an order of summary suspension of the license. The existing regulations provide standards for licensing providers of residential treatment services for children with mental illness, mental retardation or substance use disorders and are an addendum to 22VAC42-10-10 et seq., which are generic standards governing a wide variety of residential facilities licensed by the Departments of Mental Health, Mental Retardation and Substance Abuse Services (Department), Social Services, Education, and Juvenile Justice. The standards in this addendum or "Mental Health Module" as it is operationally called, cover a wide range of residential services from small group homes to large residential treatment facilities.

The new section of the regulations establishes procedures for the Commissioner to issue an order of summary suspension. It also includes the procedures for scheduling and conducting an administrative hearing when the Commissioner issues an order of summary suspension, including the appointment of a hearing officer by the Executive Secretary of the Supreme Court.

Legal basis

Other than the emergency authority described above, please identify the state and/or federal legal authority to promulgate this proposed regulation, including: 1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and 2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

The State Mental Health, Mental Retardation and Substance Abuse Services Board (Board) has the statutory authority to adopt the proposed regulations under Va. Code § 37.1-10 and Chapter 363 of the 2005 Virginia Acts of Assembly.

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

This regulatory action will add procedures to the existing Mental Health Module that will enable the Commissioner to issue an order of summary suspension consistent with the statutory authority.

The agency has developed the regulations in collaboration with representatives of various stakeholder groups and the Office of the Attorney General. The regulation is intended to provide the process for suspending the license to operate a group home or residential facility for children in cases of immediate and substantial threat to the health, safety, and welfare of the residents. The regulations will provide the basis for the Department to act in accordance with legal protocols and ensure protections for the legal rights of all parties that may be affected by an action to suspend a license.

Substance

Please detail any changes that are proposed. Please outline new substantive provisions, all substantive changes to existing sections, or both where appropriate. Set forth the specific reasons why the regulation

is essential to protect the health, safety, or welfare of Virginians. Delineate any potential issues that may need to be addressed as a permanent final regulation is developed.

For changes to existing regulations, use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
	25		This section has been inserted into the existing regulations to establish the process and requirements for the Commissioner to issue an order of summary suspension consistent with the Act. It describes procedures for appointment of a hearing officer and scheduling an administrative hearing in conjunction with the issuance of an order of summary suspension of the license. The regulation also establishes the procedures for the conduct of the hearing, decision-making, and any appeal of the decision. The regulations also require the Department to notify appropriate agencies when the Commissioner issues an order of summary suspension so that relocation plans can be made for residents who are affected by the action taken.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action.

There are no appropriate alternatives to this regulatory action. The agency is required to adopt emergency regulations to implement the provisions of the Chapter 363 of the Virginia 2005 Acts of Assembly. The agency has developed the regulations in collaboration with a stakeholder group, which included representatives of providers, and community organizations and state agencies with an interest in children’s residential facilities. This group considered various alternatives for meeting the requirements of the legislation and attempted to develop the regulatory provisions that can be easily understood and implemented. The agency intends continue to work in collaboration with the stakeholders over the next twelve months to adopt permanent regulations to replace the emergency regulations.

Family impact

Please assess the impact of the emergency regulatory action on the institution of the family and family stability.

This regulatory action will establish procedures for issuing an order of summary suspension of a license to operate a group home or residential facility for children when there is an immediate and substantial threat to the health, safety and welfare of the residents. The regulations provide a vehicle for protecting the children who are admitted to licensed facilities and promoting the accountability of service providers. They also require that parents and guardians be notified when an order is issued. This should have a positive impact on the stability the families with children who are residents in the licensed facilities.